

Amendment under 37 C.F.R. §1.111  
Serial No. 10/604,891  
Attorney Docket No. 031032

### **REMARKS**

Claims 1, 6-8 and 13-16 are pending in the above-identified application. To expedite prosecution and clarify the claimed invention, Applicants hereby cancel claims 6-8 and amend claim 13. It is respectfully submitted that this Amendment is fully responsive to the Office Action dated September 29, 2005.

The Drawings were objected to for failing to show every feature of the claimed invention. As stated above, to expedite prosecution, Applicants hereby cancel claims 6-8. Accordingly, Applicants respectfully submit that the Examiner's objection to the drawings is now moot.

The Examiner rejected claim 13 under 35 U.S.C. §112, second paragraph, as being indefinite. As stated above, to expedite prosecution, Applicants hereby amend claim 13 to recite *said cavity formed to directly contact ~~both sides of~~ a lower portion of said gate*. Accordingly, Applicants respectfully request that the Examiner withdraw the §112 rejection of claim 13.

The Examiner rejected claims 1 and 13 under 35 U.S.C. §103(a) as being unpatentable over *Kasai* (U.S. Pat. No. 5,821,594) in view of *Wu* (U.S. Pat. No. 6,180,988 B1). For at least the following reasons, Applicants respectfully request that the Examiner allow claims 1 and 13.

In rejecting these claims, the Examiner asserted that *Kasai* is provided with a silicon oxide 59 that directly contacts to the lower portion of the gate electrode, although it is not a lower permittivity material, and *Wu* discloses the appearance of disposing a lower permittivity material near the gate electrode.

The mere fact that references may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. Here, the Examiner is using impermissible hindsight reconstruction to pick and choose among isolated disclosures in the prior art in order to duplicate the claimed invention. For example, *Kasai* discloses a semiconductor device having a self-align type contact hole. Although *Kasai* discloses silicon oxide layer 59, the reference does not discuss reducing fringe capacitance. Therefore, there would be no motivation to modify the bottom silicon oxide layer 59 (column 9, lines 9-10) of *Kasai* according to the teachings of *Wu* (column 4, lines 26-27).

Furthermore, even if one were to combine the cited references, the result would not be the claimed invention. For example, in *Kasai*, which gives no suggestion of reduction in fringe capacitance, silicon oxide 59 is originally of the same material as gate insulation film 53. Whereas, in *Wu*, the portion where electric field concentrates most is not made to be lower permittivity. Therefore, even if one were to combine the cited references, the result would not reduce fringe capacitance with little change of device structure, for example, by making only the portion where electric field concentrates most be of lower permittivity.

Accordingly, Applicants respectfully request that the Examiner allow claims 1 and 13.

Claims 6-8, and 14-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Kasai* in view of *Wu* and *Lee* (U.S. Pat. No. 6,251,737 B1). As stated above, to expedite prosecution, Applicants hereby cancel claims 6-8. As claims 14-16 depend from claim 13, these claims should likewise be allowable by nature of dependency in view of the above remarks.

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For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by applicant would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicant's undersigned attorney.

If this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

**WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP**

A handwritten signature in black ink, appearing to read 'Darrin A. Auito', is written over the printed name.

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